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OFFICE OF PETITIONS

In re Application of	:	
Wyrembek et al.	:	
Application No. 10/713,160	:	DECISION ON PETITION
Filed: November 17, 2003	:	
Docket No. 245544US41X DIV	:	

This is a decision on the petition under 37 CFR 1.181, filed November 23, 2005, to withdraw the holding of abandonment for the above-identified application.

On December 23, 2004, the Office mailed a final Office action, which set a three-month shortened statutory period for reply. On June 23, 2005, applicant filed a notice of appeal and a request for an extension of time for response within the third month, and paid the requisite fees. The filing of the notice of appeal set a two-month extendable period from June 23, 2005 (the date of receipt of the notice of appeal), for applicant to submit an appeal brief. On November 16, 2005, the Office mailed a Notice of Abandonment, indicating that the above-identified application was abandoned in view of applicant's failure to file a timely and proper reply to the final Office action. On November 23, 2005, applicant filed the present petition.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

In the present petition, applicant asserted that the application was not abandoned and requested that the Office withdraw the holding of abandonment.

Upon a review of the record, applicant's assertion is correct. On June 23, 2005, applicant submitted a request for an extension of time for response within the third month and a notice of appeal, and paid the necessary fees. As previously stated, the filing of the notice of appeal set a two-month extendable period from June 23, 2005, to submit an appeal brief. Applicant could extend this period for response up to five months under 37 CFR 1.136(a) (i.e., January 23, 2006). Accordingly, the Notice of Abandonment was issued prematurely.

In view of the above, the petition to withdraw the holding of abandonment is granted. The application is restored to pending status in view of the fact that a response was timely filed and received in the USPTO on June 23, 2005.

The two-month period for filing an appeal brief under 37 CFR 41.37(a)(1), accompanied by the fee required by 37 CFR 41.20(b)(2), runs from the date of this decision.

This matter is being referred to the Technology Center Art Unit 3644.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

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